



National Clearinghouse on Child Abuse and Neglect Information National Adoption Information Clearinghouse



Gateways to Information: Protecting Children and Strengthening Families

2003 Child Abuse and Neglect State Statutes Series Ready Reference Reporting Laws: Drug-Exposed Infants

What You Need to Know

Some States have provided for specific reporting procedures for infants who show evidence of having been exposed to drugs, alcohol, other controlled substances, or drug-related activity. Other States include such types of exposure in their definitions of child abuse or neglect.

The States that have reporting laws regarding drug-exposed infants are:

Arizona	Iowa	South Carolina
California	Kentucky	South Dakota
Colorado	Massachusetts	Tennessee
District of Columbia	Michigan	Texas
Florida	Minnesota	Utah
Hawaii	Missouri	Virginia
Illinois	North Dakota	Washington
Indiana	Oklahoma	Wisconsin



The Clearinghouses are services of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

This **Ready Reference** is a product of the **Child Abuse and Neglect State Statutes Series** prepared by the National Clearinghouse on Child Abuse and Neglect Information. **Ready Reference** publications contain excerpts of text with citations from specific sections of each State's code that focus on a single issue of special interest. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

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We welcome your comments and suggestions about this publication.

ARIZONA***Ariz. Rev. Stat. Ann. § 13-3620(E) (West, WESTLAW through Ariz. 2003 Legis. Serv., Ch. 222)***

A health care professional who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in 13-3401 shall immediately report this information, or cause a report to be made, to child protective services in the Department of Economic Security. For the purposes of this subsection 'newborn infant' means a newborn infant who is under 30 days of age.

CALIFORNIA***Cal. Penal Code § 11165.13 (West, WESTLAW through End of 1999-2000 Reg. Sess., 1st Ex. Sess., & Nov. 7, 2000)***

A positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to law.

If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to a law enforcement agency.

COLORADO***Colo. Rev. Stat. Ann. § 19-1-103(1)(a) (West, WESTLAW through Colo. 2003 Legis. Serv., Ch. 91)***

Abuse or child abuse or neglect means an act or omission in one of the following categories that threatens the health or welfare of a child:

- Any case in which, in the presence of a child, or on the premises where a child is found, or where a child resides, a controlled substance, as defined in 18-18-102(5), is manufactured.

DISTRICT OF COLUMBIA***D.C. Code Ann. § 4-1321.02(d) (WESTLAW through 10-2-01)***

Any licensed health professional or a law enforcement officer, except an undercover officer whose identity or investigation might be jeopardized, shall report immediately, in writing, to the Child Protective Services Division of the Department of Human Services, that the law enforcement officer or health professional has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to drug-related activity.

D.C. Code Ann. § 16-2301(9) (WESTLAW through 2-23-03)

Neglected child means a child:

- Who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth;
- In whose body there is a controlled substance as a direct and foreseeable consequence of the acts of omissions of the child's parent, guardian, or custodian; or
- Who is regularly exposed to illegal drug-related activity in the home.

FLORIDA

Fla. Stat. Ann. § 39.01(30) (West, WESTLAW through End of 2000 Reg. Sess.)

Harm to a child's health or welfare can occur when the parent, legal custodian, or caregiver responsible for the child's welfare:

- Inflicts or allows to be inflicted upon the child physical, mental or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to the child:
 - The age of the child
 - Any prior history of injuries to the child
 - The location of the injury on the body of the child
 - The multiplicity of the injury
 - The type of trauma inflictedSuch injury includes, but is not limited to:
 - Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purpose of this subparagraph, the term *drugs* means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances.
- Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:
 - Use by the mother of a controlled substance or alcohol during pregnancy when the child, at birth, is demonstrably adversely affected by such usage; or
 - Continued chronic and severe use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

HAWAII

Haw. Rev. Stat. § 350-1 (1998)

Child abuse or neglect means the acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of 18, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed.

The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:

- When the child is provided with dangerous, harmful, or detrimental drugs; provided that this paragraph shall not apply to the child pursuant to the direction or prescription of a practitioner.

ILLINOIS**325 Ill. Comp. Stat. Ann. § 5/3 (West, WESTLAW through 2000 P.A. 91-925)**

Abused child means a child whose parent or immediate family member, or any person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent:

- Causes to be sold, transferred, distributed, or given to such child under 18 years of age, a controlled substance, as defined by law, except for controlled substances that are prescribed in accordance with the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription.

Neglected child means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in the Illinois Controlled Substances Act or a metabolite thereof.

705 Ill. Comp. Stat. Ann. § 405/2-3(1)(c) (West, WESTLAW through 2003. Reg. Sess.)

Those who are neglected include any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined 102(f) of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant is the result of medical treatment administered to the mother or the newborn infant.

325 Ill. Comp. Stat. Ann. § 5/7.3b (West Supp. 1998)

All persons required to report may refer to the Department of Human Services any pregnant person in this State who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act. The Department of Human Services shall notify the local Infant Mortality Reduction Network service provider or Department-funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the Department of Human Services or a licensed hospital which provides substance abuse treatment services. The local Infant Mortality Reduction Network service provider and Department-funded prenatal care provider shall monitor the pregnant woman through the service program.

INDIANA**Ind. Code Ann. § 31-34-1-2 (West, WESTLAW through End of 2001 1st Reg. Sess.)**

A child is a *child in need of services* if before the child becomes 18 years of age:

- The child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
- The child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.

Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

Ind. Code Ann. §§ 31-34-1-10; 31-34-1-11 (Michie 1997)

Except as provided in statute, a child is a *child in need of services* if:

- The child is born with fetal alcohol syndrome or any amount, including a trace amount, of a controlled substance or a legend drug in the child's body;
- The child has an injury, has abnormal physical or psychological development or is at a substantial risk of a life threatening condition that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy; and
- The child needs care, treatment, or rehabilitation that the child is not receiving or is unlikely to be provided or accepted without the coercive intervention of the court.

IOWA

Iowa Code Ann. § 232.68(2)(f), (2)(g) (West, WESTLAW through Iowa 2003 Legis Serv., S.F. 155)

Child abuse or abuse includes:

- An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child;
- The person responsible for the care of a child has, in the presence of the child, manufactured a dangerous substance, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

Iowa Code Ann. § 232.73 (West, WESTLAW through End of 2002 2nd Ex. Sess.)

A *medically relevant test* means a test that produces reliable results of exposure to cocaine, heroine, amphetamines, methamphetamines, or other illegal drugs, or combinations or derivatives of the illegal drugs, including a drug urine screen test.

Iowa Code Ann. § 232.77(2) (West 1998)

If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed *in utero*, the health practitioner may perform or cause to be performed a medically relevant test, as defined in § 232.73, on the child.

The practitioner shall report any positive results of such a test on the child to the Department of Human Services. The Department shall begin an investigation pursuant to law upon receipt of such a report. A positive test result obtained prior to the birth of a child shall not be used for the criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

KENTUCKY***Ky. Rev. Stat. Ann. § 214.160(3)-(4) (West, WESTLAW through 2-1-03)***

Any physician or person legally permitted to engage in attendance upon a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the Cabinet for Health Services, if the attending person has reason to believe, based on a medical assessment of the mother or the infant, that the mother used any such substance for a non-medical purpose during the pregnancy.

The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under 600.020(1), has occurred and whether investigation by the Cabinet for Health Services is necessary.

MASSACHUSETTS***Mass. Gen. Laws Ann. ch. 199, §§ 21 & 51A (West, WESTLAW through 2003 1st Ann. Sess.)***

Injured, abused, or neglected child includes a child under the age of 18 years who is determined to be physically dependent upon an addictive drug at birth.

Any mandated reporter who, in his professional capacity, shall have reasonable cause to believe that a child is suffering physical or emotional injury resulting from abuse,...or who is determined to be physically dependent upon an addictive drug at birth, shall immediately report such condition to the Department by oral communication and by making a written report within 48 hours after such oral communication.

MICHIGAN***Mich. Stat. Ann. § 722.623a (West Supp. 1998)***

A person who is required to report suspected child abuse or neglect and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the Department in the same manner as required of other reports.

A report is not required under this section if the person knows that the alcohol, controlled substance, or metabolite, or the child's symptoms, are the result of medical treatment administered to the newborn infant or his or her mother.

MINNESOTA***Minn. Stat. Ann. § 626.556, Subd. 2(c) (West, WESTLAW through End of 2000 Reg. Sess.)***

Neglect includes prenatal exposure to a controlled substance, used by the mother for a non-medical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.

Minn. Stat. Ann. § 626.5562 (West Supp. 1999)

A physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within 8 hours after delivery to determine whether there is evidence that she has ingested a controlled substance, if the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a non-medical purpose. If the test results are positive, the physician shall report the results. A negative test result does not eliminate the obligation to report if other evidence gives the physician reason to believe the patient has used a controlled substance for a non-medical purpose.

A physician shall administer to each newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance if the physician has reason to believe, based on a medical assessment of the mother or the infant, that the mother used a controlled substance for a non-medical purpose during the pregnancy. If the test results are positive, the physician shall report the results as neglect. A negative test result does not eliminate the obligation to report if other medical evidence of prenatal exposure to a controlled substance is present.

Physicians shall report to the Department of Health the results of tests performed. A report shall be made on the Certificate of Live Birth Medical Supplement or the Report of Fetal Death Medical Supplement filed on or after February 1, 1991.

Any physician or other medical personnel administering a toxicology test to determine the presence of a controlled substance in a pregnant woman, in a woman within 8 hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test, if the physician ordering the test believes in good faith that the test is required under this law and the test is administered in accordance with an established protocol and reasonable medical practice.

A positive test result reported under this law must be obtained from a confirmatory test performed by a drug testing laboratory which meets the requirements of the law and must be performed according to the requirements for performance of confirmatory tests imposed by the licensing, accreditation, or certification program listed in the law in which the laboratory participates.

Minn. Stat. Ann. § 626.5561, Subd. 1, 2, 5 (West Supp. 1999)

A mandatory reporter shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy.

Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy. An oral report shall be made immediately by telephone or otherwise.

An oral report made by a person required to report shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter.

If the report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. The local welfare agency also may take any appropriate action, including seeking an emergency

admission pursuant to the law. The local welfare agency shall seek an emergency admission if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

A person making a voluntary or mandated report under this law or assisting in an assessment is immune from any civil or criminal liability that otherwise might result from the person's actions, if the person is acting in good faith. This does not provide immunity to any person for failure to make a required report or for committing neglect, physical abuse, or sexual abuse of a child.

MISSOURI

Mo. Ann. Stat. § 191.737(1), (2), (4) (West 1998)

Notwithstanding the physician-patient privilege, any physician or health care provider may refer to the Department of Health families in which children may have been exposed to a controlled substance as defined by law or alcohol as evidenced by:

- Medical documentation of signs and symptoms consistent with controlled substances or alcohol exposure in the child at birth; or
- Results of a confirmed toxicology test for controlled substances performed at birth on the mother or the child; and
- A written assessment made or approved by a physician, health care provider, or the Division of Family Services which documents the child as being at risk of abuse or neglect.

Nothing in this section shall preclude a physician or other mandated reporter from reporting abuse or neglect of a child as required pursuant to the provisions of the reporting laws.

Any physician or health care provider complying with this law, in good faith, shall have immunity from any civil liability that might otherwise result by reason of such actions.

NORTH DAKOTA

N.D. Code § 27-20-02(8) (West, WESTLAW through N.D. 2003 Legis. Serv., S.B. 2212)

Deprived child means a child who:

- Was subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance in a manner not lawfully prescribed by a practitioner; or
- Is present in an environment subjecting the child to exposure to a controlled substance, or drug paraphernalia as prohibited by § 19-03.1-22.2.

OKLAHOMA

Okla. Stat. Ann. § 10-7103(A)(2) (West Supp. 1999)

Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents, and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance, shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred.

SOUTH CAROLINA

S.C. Code Ann. § 20-7-736(G) (WESTLAW through End of 2001 Reg. Sess.)

It is presumed that a newborn is an abused or neglected child as defined in § 20-7-490 and that the child cannot be protected from further harm without being removed from the custody of the mother upon proof that:

- A blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite is the result of medical treatment administered to the mother of the infant or the infant; or
- The child has a medical diagnosis of fetal alcohol syndrome; and
- A blood or urine test of another child of the mother or a blood or urine test of the mother at the birth of another child showed the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite was the result of medical treatment administered to the mother of the infant or the infant; or
- Another child of the mother has the medical diagnosis of fetal alcohol syndrome.

SOUTH DAKOTA

S.D. Codified Laws § 26-8A-2(9) (Michie Supp. 1998)

Abused or neglected child includes a child:

- Who was subject to prenatal exposure to abusive use of alcohol or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by statute.

TENNESSEE

Tenn. Code Ann. § 37-1-102(21) (WESTLAW through End of 2002 2nd Reg. Sess.)

Severe child abuse means:

- Knowingly allowing a child to be present within a structure where the act of creating methamphetamine is occurring.

TEXAS

Tex. Fam. Code Ann. § 261.001 (West Supp. 1999)

Abuse includes the following acts or omissions by a person:

- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- The current use by a person of a controlled substance as defined by the Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child; or
- Causing, expressly permitting, or encouraging a child to use a controlled substance.

Born addicted to alcohol or a controlled substance means a child:

- Who is born to a mother who, during the pregnancy, used a controlled substance, as defined by the Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and
- Who, after birth as a result of the mother's use of the controlled substance or alcohol:
 - Experiences observable withdrawal from the alcohol or controlled substance;
 - Exhibits observable or harmful effects in physical appearance or functioning; or
 - Exhibits the demonstrable presence of alcohol or a controlled substance in bodily fluids.

UTAH

Utah Code Ann. § 62A-4a-404 (1997)

When any person, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome or fetal drug dependency, he shall report that determination to the Division of Child and Family Services as soon as possible.

VIRGINIA

Va. Code Ann. § 63.2-1509(B) (West, WESTLAW through End of 2002 Reg. Sess.)

For purposes of the reporting law, *reason to suspect that a child is abused or neglected* shall include:

- A finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within 48 hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician;
- A finding by an attending physician made within 48 hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms;
- A diagnosis by an attending physician made within 7 days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to *in utero* exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or
- A diagnosis by an attending physician made within 7 days of a child's birth that the child has fetal alcohol syndrome attributable to *in utero* exposure to alcohol.

When *reason to suspect* is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

WASHINGTON

Wash. Rev. Code Ann. § 26.44.170(1) (West, WESTLAW through 5-12-03)

When, as a result of a report of alleged child abuse or neglect, an investigation is made that includes an in-person contact with the person who is alleged to have committed the abuse or neglect, there shall be a determination of whether it is probable that the use of alcohol or controlled substances is a contributing factor to the alleged abuse or neglect.

WISCONSIN***Wis. Stat. Ann. § 48.02(1) (West Supp. 1998)***

Abuse, other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

- When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.